



STATE OF NEW JERSEY

In the Matter of Brody Wentzell,  
Department of Environmental  
Protection

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-568

Reconsideration

**ISSUED:** December 21, 2022 (SLK)

Brody Wentzell requests reconsideration of *In the Matter of Brianna Gonzalez and Brody Wentzell* (CSC, decided November 7, 2020) regarding the retroactive appointment date of his permanent appointment as a State Park Police Officer Trainee (Trainee).

By way of background, the Department of Environmental Protection (DEP), on behalf of Brianna Gonzalez and Brody Wentzell, requested that the Civil Service Commission (Commission) relax *N.J.A.C. 4A:4-2.15(i)* to permit the application of their scores on the 2016 Law Enforcement Examination (LEE) (S9999U) to the promotional examination for the Trainee (PS1614G), DEP promotional examination, and grant them retroactive dates of permanent appointment. *N.J.A.C. 4A:4-2.15(i)* states that a candidate for an examination may be permitted to use an examination score for a period of time, or for more than one title or more than one test, as determined by the Chairperson or designee. Upon review, the Commission stated that, while it was initially appropriate *not* to utilize the LEE scores for the PS1614G examination as more than two years had passed since Gonzalez and Wentzell took the test, it could not be ignored that the only two eligibles on this eligible list resigned from State service prior to the list's promulgation date. Thus, Gonzalez and Wentzell would be the only two candidates competing in an examination for the PS1614G announcement. The Commission also indicated that there was no regulatory prohibition against the utilization of a score for another announcement more than two years after a candidate takes a test. It would only be inappropriate to do so if

there was a psychometric basis not to utilize a test score after more than two years. As Gonzalez and Wentzell both achieved passing scores on the LEE (S9999U), the resultant promotional eligible list for the current active employees would be ranked utilizing the same testing instrument. Therefore, the Commission found it appropriate to permit Gonzalez's and Wentzell's score from the (S9999U) eligible list to be applied to the PS1614G promotional examination. With respect to the appointing authority's request for a retroactive appointment date, given that Gonzalez and Wentzell had been performing the duties of the positions since their provisional appointments in 2019, and under the unique facts of the situation, the Commission found good cause to record Gonzalez and Wentzell's permanent appointments as Trainees from the PS1614G eligible list retroactively to November 7, 2020, which was the first pay period after the November 5, 2020 list promulgation date.

In his request, Wentzell presents that he was hired as a Camden County Police Officer in April 2016 until his separation in April 2019. He indicates that on April 27, 2019, he was hired as a Security Officer with the State Park Police and he was sworn in as a police officer on September 24, 2019<sup>1</sup>. Wentzell states that he was supposed to be in the Trainee title for one year and Human Resources was supposed to "pull" his LEE scores for when he first got hired in April 2019. He provides that when he was sworn in, he asked Human Resources if they "pulled" his LEE score, and it indicated that it did not, but that it would since he was sworn in. Wentzell presents that he noticed for the first time in October 2020 that Human Resources did not "pull" his score when he did not get a raise. In response to his inquiry, he indicates that Human Resources then told him that it would not "pull" his score. Wentzell indicates that Human Resources finally "pulled" his LEE score after he reached out to this agency in November 2020. Thereafter, he states that Human Resources advised that he had to stay as a Trainee until November 2021, which would be two years as a Trainee.

Wentzell provides that in July 2022, he did not receive a notice to apply for the State Park Police Sergeant (Sergeant) (PS9263G), DEP promotional examination with a July 21, 2022, closing date. He states that after he reached out to Human Resources, he was advised that he did not receive notice because he lacked one year of continuous permanent service as required and, therefore, was ineligible for the Sergeant promotional examination. He claims that this was Human Resources' fault as it did not put him in the correct title. Thereafter, Wentzell provides that he reached out to this agency and was advised that he should apply for the PS9263G promotional examination and then appeal. He notes that he received his Trainee salary for two years before receiving a raise in November 2021, and he claims that he should be on the next salary step. He also believes that he should be eligible for the Sergeant (PS9263G) promotional examination. In support of his request, Wentzell submits a prior March 9, 2021, brief that his Union attorney (brief) had submitted on

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<sup>1</sup> Personnel records indicate that he started as a Trainee on October 26, 2019.

his behalf where he requested reconsideration of his retroactive appointment date as a permanent Trainee, as he requested a retroactive appointment date prior to November 7, 2020, which was the date that he was granted in the Commission's January 20, 2021, decision.<sup>2</sup>

In Wentzell's brief, he asserts that the Commission's indication that his 2016 LEE score had a two-year limit was clear, material error as he states that there is no authority to support this position. Wentzell argues that his permanent appointment should be in 2019, or in the alternative January 21, 2020. Further, he believes that the delay in his permanent appointment from January 2020 to November 2020 was unreasonable and his permanent appointment should have been no more than two to three months from the January 21, 2020, Trainee promotional examination closing date, resulting in a permanent appointment date of no later than April 9, 2020. Wentzell also argues that administrative delays, the fact that a Trainee position is supposed to be for one year, and other equitable concerns indicate that the Commission erred by not interpreting Civil Service law and rules to provide an earlier permanent appointment date.

## CONCLUSION

*N.J.A.C.* 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

*N.J.A.C.* 4A:1-1.3 provides that "permanent employee" means an employee in the career service who has acquired the tenure and rights from regular appointment and successful completion of the working test period.

*N.J.A.C.* 4A:2-1.1(b) provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

*N.J.A.C.* 4A:4-1.1(a) provides that regular appointments to titles allocated to the competitive division of the career service shall be subject to an examination process and successful completion of working test period.

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<sup>2</sup> The record indicates that Wentzell is *pro se* in the present matter. Further, the record indicates that this agency closed Wentzell's request for reconsideration on March 7, 2022.

*N.J.A.C.* 4A:4-1.10(c) provides that, when a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay or other good cause.

Initially, the Commission's prior decision was issued on February 3, 2021. Thereafter, Wentzell initially filed a request for reconsideration, through his Union attorney, which was received by this agency on or around March 10, 2021. Therefore, Wentzell's initial request for reconsideration was timely. *See N.J.A.C.* 4A:2-1.6. Subsequently, on March 7, 2022, this agency closed his request for reconsideration. Thereafter, Wentzell again requested reconsideration of the aforementioned decision in a submission postmarked September 13, 2022. As this submission is well after 20 days from when he knew, or should have known, that his request for reconsideration was closed, the Commission finds that this second request is untimely. *See In the Matter of Joe Moody, Jr.* (CSC, decided January 15, 2020).

Regarding the merits, Wentzell has not met the standard for reconsideration as he has not presented any evidence that the Commission made clear material error in its prior decision as he contends. Specifically, the record indicates that on October 26, 2019, he was provisionally appointed as a Trainee. Therefore, as of this date, he could not have received a regular appointment since he had not been subject to an examination process. *See N.J.A.C.* 4A:4-1.1(a). Relatively shortly thereafter, the Trainee (PS1614G) promotional examination was announced with a January 21, 2020 closing date. As such, there is no basis to find that there was administrative error, administrative delay or other good cause that would merit a retroactive permanent appointment during this time. *See N.J.A.C.* 4A:4-1.10(c). Further, the test for the Trainee promotional examination was administered on October 21, 2021, and the list promulgated on November 5, 2021. While Wentzell claims that the examination process should have been completed in no more than three months, there is no prescribed time under Civil Service law and rules for the time between an examination closing date and the lists promulgation. Further, Wentzell has not presented any evidence of administrative error, administrative delay or other good cause other than his own belief that the examination process should have been completed sooner. Therefore, there is no basis to find that the Commission committed clear material error when it did not order that his permanent appointment date as a Trainee be retroactive to January 21, 2020, or April 9, 2020, as he suggests. Moreover, the Commission, in its prior decision, granted him a permanent appointment date as a Trainee retroactive to November 7, 2020, which was the first pay period after the November 5, 2020 list promulgation date for the PS1614G promotional examination. In other words, Wentzell received the earliest possible permanent appointment date as a Trainee as any other candidate who potentially could have been permanently appointed from the PS1614G eligible list.

Regarding Wentzell's statement that Human Resources did not "pull" his LEE score, the Commission did relax the rules to use his 2016 LEE Score, which enabled

him to be retroactively permanently appointed as a Trainee. However, there were no actions by Human Resources which impacted the effective date of his permanent appointment. Concerning his comments that he served two years as a Trainee, the record indicates that he only served one year as a permanent Trainee. A provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. *See O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987). Contrary to Wentzell's statement, there is no evidence that DEP did not put him in the right title when it should have. Instead, as stated above, he could not achieve permanent status as a Trainee until he completed the examination process.<sup>3</sup>

### ORDER

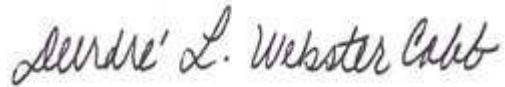
Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

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<sup>3</sup> It is also noted that it appears that even if Wentzell received a permanent appointment as a Trainee retroactive to October 26, 2019, the day of his provisional appointment as a Trainee, he still would not be eligible for the Sergeant (PS9263G) promotional examination. The PS9263G examination had a July 21, 2022, closing date. In addition to requiring one year of continuous permanent service as of the closing date, there were also education and experience requirements. The education requirements were an Associate's degree. The experience requirements were three years of experience in a federal, State, or county or municipal parks involving public/visitor assistance, protection and the safeguarding of natural and physical resources and assets of properties against negligent or unlawful acts. *N.J.A.C.* 4A:4-2.5(a)2 provides that para-professional experience requires at least 60 college credits and *N.J.A.C.* 4A:4-2.5(a)3 provides that non-professional experience requires less than 60 college credits. In other words, the Sergeant PS9263G promotional examination required three years of relevant experience in a park at the "para-professional" level. The record indicates that Wentzell was a Trainee or Police Officer with DEP from October 2019 to the closing date, which was potentially two years and 10 months of applicable experience. His prior experience with DEP was as a Security Officer from April 2019 to October 2019. A review of the job specification for Security Officer indicates that this title does not require college credits. Therefore, Wentzell's experience as a Security Officer was in non-professional work and was not at the level and scope required for the Sergeant PS9263G promotional examination. *See In the Matter of Mirian Vargas* (CSC, decided April 19, 2017). Personnel records also indicate that Wentzell was a County Police Officer with Camden County from April 2016 to April 2019. While there is nothing in the record concerning his duties in this title, based on the job specification for this title, it is unlikely that he was primarily serving in a park as required. In order for experience to be considered applicable, it must have as its primary focus full-time responsibilities in the areas required in the announcement. *See In the Matter of Bashkim Vlashi* (MSB, decided June 9, 2004). Therefore, it appears that he lacked at least two months of the required experience as of the closing date even if he received a retroactive appointment as a Trainee as he requests.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 21<sup>st</sup> DAY OF DECEMBER, 2022



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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Brody Wentzell  
Phiroza Stoneback  
Division of Agency Services  
Records Center